

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

IN RE ST. JUDE MEDICAL, INC., :
SILZONE® HEART VALVES PRODUCTS :
LIABILITY LITIGATION : MDL DOCKET NO. 1396

JOINT STATUS CONFERENCE REPORT

(January 16, 2004 Status Conference)

The parties have met and conferred and respectfully submit this Joint Status Conference Statement in anticipation of the January 16, 2004 status conference.

I. DISCOVERY MATTERS

A. PRIVILEGE LOG DOCUMENTS

On January 5, 2004, St. Jude Medical produced 32 documents pursuant to the Court's December 18, 2003 Order. With respect to the balance of the remaining privilege log documents, Plaintiffs have identified 350 additional documents that they believe should be declassified, consistent with the Court's ruling, and have provided a list of the documents to St. Jude Medical's counsel. In response, St Jude Medical requested Plaintiffs to specify the basis for their challenge to the privilege or work product designations for these 350 documents and Plaintiffs responded that they are not required to provide the basis. The parties dispute which party has the burden of demonstrating the sufficiency of the privilege assertions.

Plaintiffs have requested that St. Jude Medical produce the 350 documents to Special Master Solum for his review. St Jude Medical has reviewed the 350 documents and based on its understanding of the Court's prior rulings, has agreed to release a group of the 350 documents.

Plaintiffs propose that St. Jude Medical provide the Special Master with any additional basis to support the privilege asserted and then Plaintiffs will provide a response. St Jude Medical submits that because Plaintiffs have not set forth their reasons for challenging the documents, a meaningful meet and confer has not been possible and that submission of the unreleased documents to the Special Master is premature. St Jude Medical proposes that the parties schedule a conference with Special Master Solum to work out a procedure to resolve these issues.

B. DEPOSITION TRANSCRIPTS OF PHYSICIANS IN STATE COURT PROCEEDINGS

At the last status conference, Plaintiffs requested that St. Jude Medical produce copies of deposition transcripts of treating physicians taken in related state court cases. On December 5, 2003, St. Jude Medical submitted a letter brief contending that the physician-patient privilege prevents release of the transcripts. St. Jude Medical proposed a protocol by which the PSC would request authorization for the release of the deposition from the state court plaintiffs, thereby giving the state court plaintiffs an opportunity to assert an objection to the production of these transcripts based on the laws governing waiver of the physician-patient privilege in their respective states. The PSC rejected this approach.

Plaintiffs' reply brief contends that any physician-patient privilege has been waived and requests that the Court issue an order requiring Defendants to provide Plaintiffs with ASCII computer versions of all such deposition transcripts.

C. COMPLETION OF DISCOVERY

At this time, the parties anticipate that the discovery in the individual injury actions currently pending in the MDL will proceed according to the existing pretrial discovery schedule set forth in Pretrial Order No. 29.

II. STATUS OF CANADIAN LITIGATION

On January 14, 2004, the parties to the Canadian litigation are to present oral argument regarding issues relating to class certification. On January 15, 2004, the parties are to meet with the court regarding further settlement discussions. No discovery has been conducted nor is permitted until any appeal issues are resolved.

III. JANUARY 5, 2004 COURT ORDER REGARDING PREEMPTION

On January 5, 2004, the Court denied St. Jude Medical's motion for summary judgment based on federal preemption grounds. St. Jude Medical is still reviewing the court's order and is contemplating its appellate options, including a request to certify the issue for immediate interlocutory appeal.

IV. JANUARY 5, 2004 COURT ORDER REGARDING CLASS CERTIFICATION

On January 5, 2004, the Court entered an order conditionally certifying Class I, a medical monitoring class comprised of asymptomatic patients who received Silzone valve implants in fourteen states that recognize a stand-alone cause of action for medical monitoring, absent proof of injury. (Order at p. 12). The Court denied certification of Class II, a nationwide personal injury class asserting numerous causes of action and claiming damages.

On January 12, 2004, pursuant to Local Rule 7.1(g), Plaintiffs requested leave of Court to file a Motion for Reconsideration of the Court's Order regarding Class Certification. Plaintiffs' Motion for Reconsideration would ask the Court to (1) reinstate the medical monitoring certification with respect to the no-injury related states that recognize a stand alone

cause of action for medical monitoring; (2) reinstate class certification for the personal injury class predicated upon the defense of preemption; and (3) reclassify Illinois as an no-injury required state.

In its Class Certification Order, the Court identified several issues that the parties are to address before class proceedings can move forward. The Class Certification Order identified the following issues for discussion:

- 1. The identity of class representatives and the adequacy of representation. (Order at p. 24);**
- 2. The submission of Plaintiffs' trial plan. (p. 24);**
- 3. Additional briefing on state law regarding medical monitoring (p. 24-25);**
- 4. The potential preclusive effects of medical monitoring litigation on future claims (p. 12 n. 8); and**
- 5. The propriety of the limited certified class based on Minnesota's Consumer fraud laws (p. 2 n. 1).**

St. Jude Medical has indicated that it is prepared to discuss these issues preliminarily and has proposed the following briefing schedule:

- On or before March 16, 2004, plaintiffs will identify class representatives — both for the medical monitoring class and the consumer protection statute class — and provide St. Jude Medical with completed fact sheets and authorizations for release of medical records for all the proposed representatives, as outlined in Pretrial Order No. 2.

- On or before July 16, 2004, defendants will complete discovery on the proposed class representatives and other issues relating to adequacy of representation, typicality, and commonality.
- On or before August 16, 2004, plaintiffs will submit a written trial plan, including briefing on the adequacy of class representatives and the sufficiency of the trial plan for both classes.
- On or before October 1, 2004, St. Jude Medical will respond with briefing on the following issues: (1) the adequacy of the class representatives, (2) the sufficiency of plaintiffs' proposed trial plan, (3) the substantive state law of medical monitoring, and (4) the propriety of maintaining a class based on Minnesota's consumer protection statutes.
- On or before November 1, 2004, plaintiffs will reply on all issues.
- On or before December 1, 2004, St. Jude Medical will reply on the propriety of a class under Minnesota's consumer protection statutes.

Plaintiffs are prepared to discuss the above-stated issues but oppose the length of St. Jude Medical's proposed schedule and believe it is premature to discuss any schedule until Plaintiffs' January 12, 2004 request for leave to file a Motion for Reconsideration is resolved by the Court.

DATED:

ZIMMERMANN REED, P.L.L.P

By: _____

J. Gordon Rudd, Jr., No. 222082
Plaintiffs' Liaison Counsel

DATED:

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